

THE STATE OF COLORADO DEFERRED COMPENSATION PLAN

Amended and Restated
Effective May 1, 2004

THE STATE OF COLORADO DEFERRED COMPENSATION PLAN

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THE STATE OF COLORADO DEFERRED COMPENSATION PLAN

ARTICLE 1

INTRODUCTION AND PURPOSE OF PLAN

1.1 **ESTABLISHMENT OF PLAN.** In accordance with the provisions of CRS 1973, 24-52-101 et. seq., the State of Colorado (the "State") hereby adopts, effective as of January 1, 2002, this amendment and restatement of The State of Colorado Deferred Compensation Plan (the "Plan") as a continuation of the Plan previously adopted by the State effective as of May 1, 1981, and subsequently amended effective as of January 1, 1985, January 1, 1987, January 1, 1989 and July 1, 1998. The Plan shall be maintained for the exclusive benefit of covered individuals and is intended to comply with the eligible deferred compensation plan requirements under §457 of the Internal Revenue Code of 1986, as amended, and regulations there under, and other applicable law.

1.2 **PURPOSE OF PLAN.** The purpose of this Plan is to enable Eligible Employees who become covered under the Plan to enter into agreements with the State to defer a portion of their Compensation on a tax deferred basis and receive benefits at termination of employment, retirement or death or in the event of financial hardship due to unforeseeable emergencies. Participation in this Plan shall not be construed to establish or create an employment contract between the Eligible Employee and the State.

ARTICLE 2

DEFINITIONS

Whenever used in the Plan, the following terms shall have the meanings as set forth in this Article unless a different meaning is clearly required by the context.

2.1 **ADMINISTRATOR** means the Committee, or any individual(s) or committee appointed in the future by the State to administer the Plan.

2.2 **BENEFICIARY** means the person, persons, or legal entity entitled to receive benefits under this Plan which become payable in the event of the Participant's death.

2.3 **CODE** means the Internal Revenue Code of 1986, as amended and includes any regulations thereunder.

2.4 **COMMITTEE** means the Colorado State Deferred Compensation Committee as established under Colorado Revised Statutes Section 24-52-102.

Notwithstanding the foregoing, Compensation shall not include any amount paid to a Participant as severance following Severance from Employment.

2.5 **COMPENSATION** means total remuneration paid by the State to a Participant during each Plan Year during which such person is a Participant, plus, if not included based on the foregoing, amounts which are paid out of an Employee's remuneration from the State and which are "elective contributions" which are not includible in gross income under Code §§125, 402(e)(3), 402(h)(1)(B) or 403(b), deferrals under an eligible deferred compensation plan within the meaning of Code §457(b) or employer "pick-up" contributions (under governmental plans) within the meaning of Code §414(h)(2).

2.6 **DEFERRAL** means the annual amount of Compensation that a Participant elects to defer pursuant to a properly executed Voluntary Salary Deferral Agreement.

2.7 **DEFERRED COMPENSATION ACCOUNT OR ACCOUNT** means the account established and maintained on behalf of a Participant as provided in Section 8.4.

2.8 **ELIGIBLE EMPLOYEE** means any person, including an elected or appointed official, who is employed by the State and who receives Compensation from the State.

2.9 **INCLUDABLE COMPENSATION** means for any taxable year, an Eligible Employee's compensation as defined in Code Section 415(c)(3), for services performed for the State. Compensation under Code Section 415(c)(3) includes any elective deferrals as defined in Code Section 402(g)(3), and any amount which is contributed or deferred by the State at the election of the Eligible Employee and which is not includible in the gross income of the employee by reason of Code Sections 125, 132(f)(4) or 457. Includable Compensation shall be determined without regard to any community property laws.

2.10 INVESTMENT OPTIONS means any group fixed and variable deferred annuity, any regulated investment companies registered under the Investment Company Act of 1940, any common trust funds or collective investment fund qualified under §§401 and 501 of the Code, and any other funding vehicle (including, but not limited to, limited partnership interests) which the State permits under the terms of the Plan.

2.11 NORMAL RETIREMENT AGE means that combination of age and years of service credit specified by the Public Employees' Retirement Association ("PERA") or the basic retirement plan in which they participate that would result in an unreduced retirement benefit or, if the Participant continues to provide services to the State after reaching his or her normal retirement age described above, such Participant's Normal Retirement Age shall be the Participant's actual retirement date.

2.12 PARTICIPANT means an Eligible Employee or former Eligible Employee who has been enrolled in this Plan and who retains the rights to benefits under the Plan.

2.13 PLAN means The State of Colorado Deferred Compensation Plan as it may be amended from time to time.

2.14 PLAN YEAR means the twelve (12) consecutive month period beginning each January 1 and ending the following December 31 during which this Plan is in effect.

2.15 SEVERANCE FROM EMPLOYMENT means the severance of a Participant's employment with the State including retirement and death as defined under §457(d)(1)(ii) of the Code. Any Participant who is granted a leave of absence by the State will not be treated as incurring a Severance from Employment as long as the leave of absence is approved by the State. If an approved leave of absence is terminated by the State or the Participant without the resumption of the employment relationship, the Participant shall be treated as incurring a Severance from Employment under this Plan as of the date of termination of such leave.

2.16 STATE means the State of Colorado.

2.17 TRUST means the trust which may be established under this Plan or under a separate trust agreement which forms a part of this Plan.

2.18 TRUST FUND means the assets of the Trust.

2.19 TRUSTEE means the Committee, or any individual(s) or committee appointed in the future by the State to serve as trustee of the Trust.

2.20 UNFORESEEABLE EMERGENCY means a severe financial hardship of the Participant or Beneficiary resulting from an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Code Section 152(a)) of the Participant, loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, such as the result of a natural disaster), or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The

circumstances that will constitute an “Unforeseeable Emergency” will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

- (i) through reimbursement or compensation by insurance or otherwise;
- (ii) by liquidation of the Participant’s assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- (iii) by cessation of deferrals under the Plan.

Without limiting the generality of the foregoing, the term “Unforeseeable Emergency” shall not include foreseeable personal expenditures normally budgetable, such as a down payment on a home, the purchase of an automobile, college or other educational expenses, and the like. “Unforeseeable Emergency” may, depending upon the facts and circumstances, include the imminent foreclosure of or eviction from the Participant’s or Beneficiary’s primary residence, the need to pay for medical expenses, including non-refundable deductibles and the cost of prescription drug medication, and the need to pay for the funeral expenses of a spouse or a dependent. The decision of the Administrator or its designee concerning the payment of benefits under this section shall be final and binding upon the Participant.

2.21 VOLUNTARY SALARY DEFERRAL AGREEMENT means the agreement between a Participant and the State to defer receipt by the Participant of Compensation not yet earned. Such agreement shall state the Deferral amount to be withheld from a Participant's paycheck and shall become effective no earlier than the first day of the month following the execution of such agreement by the State.

ARTICLE 3

PARTICIPATION IN THE PLAN

3.1 **ELIGIBILITY.** Each Eligible Employee may become a Participant in this Plan on his or her date of commencement of employment as an Eligible Employee, or on any date thereafter, after enrollment pursuant to Section 3.2. Any person elected or appointed to a term of office with the State shall be deemed to commence employment at the time such person assumes office.

3.2 **ENROLLMENT.** Eligible Employees may enroll in the Plan by completing a Voluntary Salary Deferral Agreement and submitting it to the Administrator prior to the first day of the month after the date of commencement of employment or prior to the first day of any subsequent month. Deferrals shall commence as soon as administratively practicable thereafter, but in no event before the later of the first day of the next payroll period or the first day of the month after the day the Administrator receives a properly executed Voluntary Salary Deferral Agreement for the Participant.

Upon establishment of the Trust under the Plan, the State shall contribute to the Trust an amount equal to the Deferrals made by a Participant as soon as practicable after each such Deferral by the Participant.

3.3 **TERMINATION.** A Participant terminates participation in the Plan in the month in which the entire amount of his Defined Contribution Account has been paid to or on behalf of the Participant.

ARTICLE 4

DEFERRAL OF CONTRIBUTIONS

4.1 MAXIMUM DEFERRAL.

(a) Primary Limitation. Subject to rules established by the Committee, the maximum Deferral amount for any Participant in any taxable year shall not exceed the lesser of:

- (i) the applicable dollar amount as provided in Code §457(e)(15), or
- (ii) one hundred percent (100%) of the Participant's Includable Compensation for the taxable year.

The applicable dollar limit for deferrals established under subparagraph (i) of this paragraph (a) is increased for eligible participants who have attained the age of 50 or older before the close of the calendar year by the additional amounts permitted under Section 414(v) of the Code. The additional deferral amount is not available during the three years the Participant is utilizing the regular catch-up deferral limitation under paragraph (b) of this §4.1.

(b) Catch-up Limitation. A participant can elect to begin catch-up Deferral up to the maximum limit no earlier than three (3) consecutive taxable years immediately preceding the year a Participant attains Normal Retirement Age and no later than the full taxable year before the year a Participant actually retires, however, the start date of such election becomes irrevocable once catch-up Deferral begins. The maximum Deferral amount shall be the lesser of: (i) twice the applicable dollar limit established under subparagraph (i) of paragraph (a), or (ii) the sum of: (A) the primary limitation amount determined under paragraph (a) for the current year, and (B) that portion of the primary limitation amount not utilized in prior taxable years in which the Participant was eligible to participate in the Plan, beginning after 1978. A Participant may use a prior year only if the Deferrals under Plan in existence during that year were subject to the then current maximum deferral amount described in applicable regulations. The catch-up limitation is available to a Participant during one three-year period only. If the Participant elects and completes a consecutive three year catch-up period and then postpones retirement or returns to work, after retirement, the catch-up limitation shall not be available again. If a Participant elects and begins the catch-up Deferral, retires, and returns to State employment after retirement within the previously elected three year catch-up period, such a rehired Participant is eligible to make catch-up Deferrals for the remainder of the previously elected three year catch-up period.

(c) Coordination With Other Plans. If a Participant participates in more than one eligible deferred compensation plan (as defined in §457(b) of the Code) other than a plan that is a qualified governmental excess benefit arrangement (as defined in §415(m)(3) of the Code), the maximum deferral under all such eligible deferred compensation plans shall not exceed the primary limitation amount described in §4.1(a) above and subject to modification by the catch-up limitation described in § 4.1(b) above).

(d) Return of Excess Deferrals. If a Participant's Deferrals to the Plan in any

taxable year exceed the primary limitation amount in section 4.1(a) above, as modified by the catch up limitation in section 4.1(b), such excess deferral, including any income allocable to such amount, shall be distributed by the Plan to the Participant not later than the first April 15 following the close of the taxable year of the excess deferral. Any excess deferral is included in the gross income of the Participant for the taxable year of the excess deferral.

4.2 MINIMUM DEFERRAL. Each Eligible Employee who becomes a Participant must agree to defer at a rate of a minimum of twenty-five dollars (\$25.00) per month.

4.3 MODIFICATIONS TO AMOUNT DEFERRED. A Participant may change Deferrals with respect to Compensation not yet earned by submitting a new Voluntary Salary Deferral Agreement, or by submitting a new election in any other acceptable manner, to the Administrator. Such change shall take effect as soon as administratively practicable after the Participant submits the Voluntary Salary Deferral Agreement, or other acceptable election, to the Administrator but no earlier than the later of the first day of the month or the first day of the payroll period following receipt by the Administrator of the Voluntary Salary Deferral Agreement, or other acceptable election, from the Participant. Modifications (other than a revocation of participation as provided in Section 4.4) are subject to the limitations specified in the Plan.

4.4 REVOCATION OF DEFERRAL. Any participant may revoke his or her election to have Compensation deferred by so notifying the Administrator in writing. The Participant's full Compensation on a nondeferred basis will then be restored as soon as administratively practicable, but no earlier than the later of the first day of the month or the first day of the payroll period following receipt of such written notice by the Administrator from the Participant. Notwithstanding a revocation under this Section, the Participant's benefits under the Plan shall be paid only as provided in Article 5.

4.5 DURATION OF DEFERRAL ELECTION. Once a Deferral election has been made by the Participant, the election shall continue in effect until the Participant's Severance from Employment, unless the Participant modifies the Deferral in accordance with Section 4.3 or revokes the Deferral in accordance with Section 4.4.

4.6 ROLLOVER AMOUNTS FROM OTHER ELIGIBLE PLANS.

(a) Subject to rules adopted by the Committee, a Participant may make and the Plan will accept a direct rollover or regular rollover of an Eligible Rollover Distribution as defined in §5.6, excluding after-tax participant contributions, from an eligible plan under §457 (b) of the Code as permitted by §408(d)(3) of the Code.

(b) Upon receipt of a Rollover Contribution, the Trustee shall credit the amount of any Rollover Contribution to the contributing Participant's Rollover Account in the Plan and shall invest such amount in accordance with the provisions of this Plan.

(c) For purposes of determining whether any amount tendered by a Participant for rollover is a qualified distribution, the Participant shall establish to the satisfaction of the Board that the amount tendered as a Rollover Amount represents a qualified distribution of the Participant from an eligible plan maintained by the former employer(s) of the Participant. The Committee shall have the authority to determine whether or not a contribution proposed by a Participant constitutes a

"Rollover Contribution" eligible for rollover treatment in accordance with this Section 8.8 and Code Section 402. In making such determination, the Committee may require reasonable proof of demonstration by the Participant of the eligibility of the proposed contribution for rollover treatment. The Committee may rely conclusively upon the opinion of legal counsel for the Trust Fund in making any such determination.

(d) Rollover amounts under this section 4.6 are subject to the distribution rules of Article 5 of this Plan and may not be distributed until eligible for payment under section 5.1.

4.7 MILITARY SERVICE. Notwithstanding any provision of this Plan to the contrary, contributions and benefits with respect to qualified military service will be provided in accordance with Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994 (Title 38 U.S. Code, Chapter 43, Sections 4301-4333, Public Law 103-353). Subject to the limitations of Code Section 414(u), a participant eligible under this section 4.7 will be permitted to make additional elective deferrals under the plan up to the maximum amount that the participant would have been permitted to make under the Plan during the period of qualified military service.

ARTICLE 5

DISTRIBUTION OF BENEFITS

5.1 ELIGIBILITY FOR PAYMENT. Except as otherwise provided in this Plan, distribution of a Participant's Deferred Compensation Account from the Plan may commence upon Severance from Employment of the Participant upon proper application in a manner approved by the Board. The distribution shall not occur prior to the earliest of: (i) the calendar year in which the Participant attains age seventy and one-half (70 1/2), (ii) the Participant's Severance from Employment, (iii) the Participant's death, or (iv) the date the Participant incurs a financial hardship due to an Unforeseeable Emergency. Notwithstanding the preceding, a Participant shall be permitted to receive a distribution from the Participant's Deferred Compensation Account under the Plan as provided in, and subject to the conditions of, Section 5.5.

5.2 DISTRIBUTION DUE TO UNFORESEEABLE EMERGENCY. A Participant may request a distribution due to a severe financial hardship by submitting a written request to the Administrator accompanied by evidence to demonstrate that the circumstances being experienced qualify as an Unforeseeable Emergency. The Administrator shall have the authority to require such evidence as deemed necessary to determine if a distribution is warranted. If an application for a hardship distribution due to an Unforeseeable Emergency is approved, the distribution shall be limited to an amount sufficient to meet the emergency and the Participant will be required to cease deferrals into the Plan for a period of six months beginning after receipt of the distribution under this §5.5. The allowed distribution shall be payable in a method determined by the Administrator as soon as possible after approval of such distribution.

A Participant who has commenced receiving installment payments under the Plan may request acceleration of such payments in the event of severe financial hardship due to an Unforeseeable Emergency. The Administrator may permit accelerated payment to the extent such accelerated payment does not exceed the amount necessary to meet the Unforeseeable Emergency.

All decisions by the Administrator or its designee in matters relating to distributions under this Section shall be final and binding on all parties.

5.3 COMMENCEMENT OF DISTRIBUTIONS. Except as otherwise provided herein, distribution of a Participant's Deferred Compensation Account shall commence no later than sixty (60) days after the Plan Year in which occurs the later of (i) the Participant's Severance from Employment, or (ii) the Participant's attainment of Normal Retirement Age, and the distribution of the Deferred Compensation Account shall be made in accordance with one of the payment options described in Section 6.2. Notwithstanding the preceding, distribution of a Participant's Deferred Compensation Account must commence no later than the first day of April following the calendar year in which the later of the Participant's termination of employment with the State or attainment of age seventy and one-half (70-1/2) occurs, the "Required Beginning Date".

(a) Compliance with Applicable Code Provisions. Notwithstanding the foregoing and any provisions of the Plan to the contrary, the Administrator shall require any distributions necessary to meet the requirements of Code Section 401(a)(9) and the Treasury Regulations promulgated thereunder, in accordance with the following Required Minimum Distribution Rules:

(1) General Rules.

(a) Effective Date. The provisions of this Section 5.3(a) will apply for purposes of determining required minimum distributions for calendar years beginning with the 2001 calendar year.

(b) Precedence. The requirements of this Section 5.3(a) will take precedence over any inconsistent provisions of the Plan.

(c) Requirements of Treasury Regulations Incorporated. All distributions required under this Section will be determined and made in accordance with the Treasury Regulations under Code § 401(a)(9).

(d) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed to the Participant no later than the Participant's required beginning date as defined in Section 5.3(a).

(2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(b) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 5.3(a)(2) other than Section 5.3(a)(2)(a), will apply as if the surviving spouse were the Participant.

(e) For purposes of this Section 5.3(a)(2) and Section 5.3(a)(4), unless Section 5.3(a)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Section 5.3(a)(2) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 5.3(a)(2)(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 5.3(a)(2)(a), the date distributions are considered to begin is the date distributions actually commence.

(f) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 5.3(a)(3) and 5.3(a)(4). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

(3) Required Minimum Distributions During Participant's Lifetime.

(a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (i) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in § 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the

distribution calendar year; or

(ii) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in § 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(b) Lifetime required minimum distributions continue through year of Participant's death. Required minimum distributions will be determined under this Section 5.3(a)(3) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(4) Required Minimum Distributions After Participant's Death.

(a) Death On or After Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

(A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of

the Participant's death, reduced by one for each subsequent year.

(ii) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death Before Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 5.3(a)(4)(a).

(ii) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 5.3(a)(2), this Section 5.3(a)(4)(b) will apply as if the surviving spouse were the Participant.

(5) Definitions. The following definitions apply to this Section 5.3(a):

(a) Designated Beneficiary. The individual who is designated as the Beneficiary by a Participant, or by the Plan, who is a "designated beneficiary" under Code § 401(a)(9) and § 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.

(b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the

Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 5.3(a)(2). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(c) **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in § 1.401(a)(9)-9 of the Treasury Regulations.

(d) **Participant's Account Balance.** The balance of the Participant's Account as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(e) **Required Beginning Date.** The latest date for commencement of distributions for a Participant, as determined under Section 5.3 of the Plan.

5.4 DEATH DISTRIBUTION PROVISIONS.

(a) **Death After Distribution.** If the Participant dies after the distribution of his or her interest has commenced, the remaining portion of his or her Deferred Compensation Account, if any, will be distributed to the Beneficiary determined pursuant to Section 2.2 at least as rapidly as under the method of distribution being used for the distribution to the Participant prior to his or her death. Notwithstanding the foregoing, distribution of a Participant's Deferred Compensation Account must be distributed by the required beginning date and in the form and manner set forth in Section 5.3(a).

(b) Death Before Distribution. If the Participant dies before distribution of his or her Deferred Compensation Account commences, the Participant's Deferred Compensation Account will be distributed to the Beneficiary determined pursuant to Section 2.2, in the form permitted by the Administrator and elected by the Participant or the Beneficiary, or at the discretion of the State, in the form of a lump sum payment as soon as administratively practicable after the Participant's death. Notwithstanding the preceding, distribution of the Participant's Deferred Compensation Account must be distributed by the required beginning date and in the form and manner set forth in Section 5.3(a).

5.5 IN-SERVICE DISTRIBUTIONS OF SMALL AMOUNTS. Effective January 1, 1997, a Participant shall be entitled to receive, and the Administrator shall be permitted to make, a distribution from the Plan of the balance of the Participant's Deferred Compensation Account without the Participant's consent prior to the Participant's attainment of age seventy and one-half (70 1/2), Severance from Employment or death and without the Participant being required to produce evidence of the occurrence of an Unforeseeable Emergency if (i) the amount of the distribution does not exceed five thousand dollars (\$5,000), (ii) the Participant has not, during the two (2) year period ending on the date of the distribution under this Section, made any contributions to the Participant's Deferred Compensation Account maintained under the Plan and (iii) the Participant has not received a prior distribution under this Section.

5.6 DIRECT ROLLOVERS. A Distributee may elect, in a manner consistent with section 457 (e)(16) of the Code and at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, except that a Distributee may not elect a Direct Rollover of a distribution or series of distributions of less than \$200 in a single calendar year. For purposes of applying this §5.6, the following definitions shall apply:

(a) Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance of a participating member's account to the credit of the Distributee except that an Eligible Rollover Distribution does not include:

- (i) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and his designated beneficiary, or for a specified period of ten (10) years or more;
- (ii) Any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (iii) The portion of any distribution that is not includable in a Distributee's gross income; or
- (iv) any corrective distribution of excess contributions and any corrective distribution of excess aggregate contributions and income allowable to such corrective distributions;

(v) any distribution that is deemed to result from a default on a loan from the Plan to the Distributee, and any other loan treated as a distribution under Code Section 72(p) and not excepted by Code Section 72(p)(2); or

(vi) any unforeseeable emergency distribution under §5.2.

(b) Eligible Retirement Plan. An Eligible Retirement Plan as described in Section 402(c)(8)(B) is an individual retirement account described in Code Section 408(a), an annuity plan described in Code Section 408 (b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a governmental entity described in Code section 457 (e)(1)(A), an annuity contract described in Code section 403(b) that accepts the Distributee's Eligible Rollover Distribution..

(c) Distributee. A Distributee includes a participant or former participant. In addition, the participant's or former participant's spouse or former spouse are Distributees with regard to the interest of the spouse or former spouse.

(d) Direct Rollover. A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

5.7 TRANSFERS TO PURCHASE DEFINED BENEFIT PLAN SERVICE CREDIT. Subject to rules established by the Board and as permitted by section 457(e)(17) of the Code, a Participant may elect to have all or any portion of the Participant's Account paid via a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d) of the Code) for the purchase of permissive service credit (as defined in section 415(n) of the Code) or for repayments under section 415(k)(3) of the Code.

5.8 ABANDONED ACCOUNTS. As provided in the Colorado Unclaimed Property Act, Section 38-13-108(2), C.R.S. (2003), an account that remains unclaimed for three (3) years after the date that distribution of all or part of a Participant's or Beneficiary's benefit under the Plan is mandated under section 5.3 such account shall be presumed abandoned and treated as provided in the Act. The Trustee's good faith effort to comply with the act shall be deemed consistent with the Trust provisions in Article 10 of the Plan.

5.9 LOAN PROGRAM. Effective January 1, 2004, the Committee has established a participant loan program in accordance with the requirements of Code Sections 457, and 72(p) and the regulations thereunder, as set forth in and governed by Article XIX of the State of Colorado 457 Match Plus Plan Operating Plan as amended through January 9, 2003.

ARTICLE 6

FORM OF PARTICIPANT'S BENEFIT DISTRIBUTION

6.1 **ELECTION.** A Participant may elect the form of distribution of his or her Deferred Compensation Account and may revoke that election (with or without a new election) at any time before thirty (30) days preceding the date distribution of the Participant's Deferred Compensation Account is to commence, as provided in the Plan, by notifying the Administrator in writing, subject to the Administrator's approval.

6.2 **LIMITS ON SETTLEMENT OPTIONS.** Distributions may be made by the Administrator in the following forms: (i) a lump sum cash payment, (ii) substantially equal periodic installment payments over a period of years not longer than the life expectancy of the Participant or the joint life expectancy of the Participant and the Participant's spouse (as determined under Table V and VI of Treasury Regulation § 1.72-9), or (iii) through the purchase of an annuity which provides for payments described in (ii) of this Section 6.2. The purchase of an annuity under this section shall be a complete discharge of the Plan's obligation to the Participant and no further benefits shall be payable by the Plan.

Notwithstanding any provision to the contrary, the Committee may, in its sole discretion defer the commencement of the distribution of the Participant's Deferred Compensation Account or distribute the Deferred Compensation Account in a lump sum cash payment as soon as administratively practicable after the Participant's Severance from Employment.

6.3 **FAILURE TO MAKE ELECTION.** If a Participant or Beneficiary fails to elect a form of distribution before thirty (30) days preceding the distribution commencement date, benefits shall be paid in a lump sum cash payment.

ARTICLE 7

BENEFICIARY INFORMATION

7.1 **DESIGNATION.** A Participant shall have the right to designate a Beneficiary or Beneficiaries, and amend or revoke such designation at any time, in writing. Such designation, amendment or revocation shall be effective upon receipt by the Administrator of such written designation on forms provided by the Administrator.

7.2 **SPECIAL RULES.** The designated Beneficiary or Beneficiaries will receive the balance of the Participant's Deferred Compensation Account upon the Participant's death in accordance with Section 5.4 and the following:

(i) Participants may designate primary and secondary Beneficiaries. A secondary Beneficiary and/or Beneficiaries will become entitled to a distribution of any remaining balance of the Participant's Deferred Compensation Account only after the death of any and all primary Beneficiaries.

(ii) If more than one Beneficiary is named in either category, benefits will be paid according to the following rules:

(A) Beneficiaries can be designated to share equally in or to receive specific percentages of, the remaining balance, if any, of the Participant's Deferred Compensation Account.

(B) If a Beneficiary dies before the Participant, only the surviving Beneficiaries will be eligible to receive any benefits in the event of the death of the Participant. If more than two Beneficiaries are originally named to receive different percentages of the benefits, surviving Beneficiaries will share in the same proportion to each other as indicated in the original designation.

(iii) A person, trustee, estate or other legal entity may be designated as a Beneficiary.

(iv) If a Beneficiary has not been designated, or a designation is ineffective due to the death of any and all Beneficiaries prior to the death of the Participant, or the designation is ineffective for any reason, the estate of the Participant shall be the Beneficiary.

(v) Upon the death of the Participant, any Beneficiary entitled to the value of the Deferred Compensation Account under the provisions of this Section shall become a "Vested Beneficiary" and have all the rights of the Participant with the exception of making any Deferrals, including the right to designate a Beneficiary(ies) to the extent such designation does not conflict with a prior Beneficiary designation made by the Participant.

(vi) Notwithstanding the foregoing, distribution to a Beneficiary under this Section must be distributed by the required beginning date and in the form and manner set forth in Section 5.3(a).

ARTICLE 8

PLAN ADMINISTRATION AND FUNDING

8.1 **PLAN ADMINISTRATION.** This Plan shall be administered by the Committee. The Committee shall have full power and authority to adopt rules and regulations for the administration of the Plan, to enter agreements on behalf of the State which are necessary to implement this Plan and to interpret, alter, amend, and revoke any rules and regulations so adopted. All decisions concerning withdrawal, payment, method of payment, investment of funds, etc., shall be solely the responsibility of the Committee. The Committee shall have responsibility for the operation and administration of the Plan and shall direct payment of Plan benefits. The Committee shall have the power and authority to delegate ministerial duties and employ such outside professionals, as may be required for prudent administration of the Plan. Members of the Committee, if otherwise eligible, may participate in the Plan, but shall not be entitled to make decisions which impact solely on his or her own participation.

8.2 **OWNERSHIP OF ASSETS.** Effective on and after July 1, 1998, as provided in Section 8.6, all amounts of compensation deferred under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held in Trust.

8.3 **PLAN-TO-PLAN TRANSFERS.** Notwithstanding any other provisions under the Plan, amounts deferred by a former Participant of the Plan may, in the Administrator's discretion, instead of being distributed upon Severance from Employment, be transferred at the request of the Participant to another eligible deferred compensation plan (as defined in §457 of the Code) in which the former Participant has become a participant, provided:

(i) the plan receiving such amounts provides for acceptance of such transfers; and

(ii) the Participant's Severance from Employment occurs so that the Participant can accept employment with another eligible employer (as defined in §457 of the Code).

This Plan likewise may accept the transfer of amounts previously deferred by a Participant under another eligible deferred compensation plan (as defined in §457 of the Code).

8.4 **ACCOUNTS AND EXPENSES.** The State shall establish and maintain a Deferred Compensation Account on behalf of each Participant. Such Deferred Compensation Account shall be valued at fair market value as of the last day of the Plan Year and such other dates as necessary for the proper administration of the Plan and each Participant shall receive a periodic written accounting of his or her Deferred Compensation Account balance following such valuation. Each Participant's Deferred Compensation Account shall be credited with the amount of any Deferrals and any amounts transferred pursuant to Section 8.3 and shall be further credited or debited, as applicable, with (i) any increase or decrease resulting from investments pursuant to Section 8.5, (ii) any expenses incurred by the State in maintaining and administering this Plan, which may be paid out of the Plan, and (iii) the amount of any distribution.

8.5 FUNDING REQUIREMENTS. Notwithstanding anything in this Article or in the Plan to the contrary, effective on and after July 1, 1998, all assets held in respect of the Plan, including all Deferred Compensation Accounts maintained as of July 1, 1998 and all Deferrals and earnings on Deferred Compensation Accounts after such date, shall be held in trust or in an alternative funding medium for the exclusive benefit of Participants and their Beneficiaries as required (or permitted) under Code §457(g) in accordance with an instrument in writing satisfying the requirements of Code §457(g).

ARTICLE 9

AMENDMENT OR TERMINATION OF PLAN

9.1 **AMENDMENT OF PLAN.** The Committee shall have the right to amend the Plan, at any time and from time to time, in whole or in part, provided that no amendment shall increase the duties or liabilities of the Trustee without the written consent of the Trustee. Any amendment shall be set forth in an instrument in writing, a copy of which shall be provided to the Trustee as soon as practicable following its adoption.

9.2 **TERMINATION.** Although the State has established this Plan with the intention and expectation to maintain the Plan indefinitely, the State may terminate or discontinue the Plan in whole or in part at any time without any liability for such termination or discontinuance. Upon Plan termination, all Deferrals shall cease. The State in its sole discretion shall retain all Deferrals and Deferred Compensation Account balances until distribution of benefits commences under Article 5 in the form determined under Article 6 or shall distribute all Deferrals and Deferred Compensation Account balances to Participants and Beneficiaries at such times and in such manner as it deems appropriate.

ARTICLE 10

TRUST AND TRUSTEE

10.1 **TRUST FUND.** The Trust Fund shall consist of all deferrals made or transferred to the Trust Fund as provided herein, and the investments and reinvestments thereof and the income thereon which shall be accumulated and added to principal.

10.2 **TRUSTEE CONTROL.** The Trustee shall hold and invest the funds and assets received by the Trustee under this Plan subject to the terms of this Plan and for the purposes herein set forth. The Trustee shall be responsible only for such funds and assets as shall actually be received by the Trustee as Trustee hereunder.

So long as a Trustee is acting, title to any of the assets of the Trust Fund may be held or registered in the name of a nominee of the Trustee for ease of dealing with the same, provided that the books of the Trust reflect actual ownership. The Trustee shall be liable for the acts of its nominees. The assets so held or registered shall at all times remain in the possession or under the control of the Trustee.

10.3 **INVESTMENT OPTIONS.**

(a) The Trustee shall establish such Investment Options as the Administrator shall direct, and shall divide the trust among Investment Options in accordance with the investment directions of Participants which are made as provided in this Plan.

(b) The Trustee may offer Investment Options through a directed brokerage arrangement. Neither the Committee, the Trustee, nor the Administrator has any duty, responsibility or liability to determine or review the appropriateness of Investment Options made available through any investment brokerage arrangement established under the Plan.

(c) Investment Options shall be established either by direct investment or through the medium of a bank, a trust fund, an insurance contract or regulated investment company mutual fund, as the Administrator shall direct. Each investment option shall be held and administered as part of the Trust, but shall be separately invested and accounted for. For this purpose, a directed brokerage arrangement established under paragraph (b) shall be considered a single investment option.

The assets of the Trust invested in each of the options shall be separately valued at fair market value as of the appropriate valuation date pursuant to Section 8.4.

10.4 **PARTICIPANT DIRECTED INVESTMENTS.**

(a) A Participant may request that Deferrals and Deferred Compensation Account balances be allocated among the available Investment Options designated by the Administrator. The initial allocation request may be made at the time of enrollment. Once made, an investment allocation request shall remain in effect for all subsequent Deferrals until changed by the Participant. A Participant may change his or her investment allocation at such times as are permitted by the

Administrator. Such changes shall become effective as soon as administratively practicable after the Administrator's receipt of such investment allocation election. Although the State intends to invest Deferrals and Deferred Compensation Account balances according to the Participant's requests, it reserves the right to unilaterally change the available Investment Options without regard to relative investment return or to invest Deferrals and Deferred Compensation Account balances without regard to such requests.

(b) Subject to rules established by the Trustee, Participant or Beneficiary may also request that Contributions and Defined Contribution Account balances be allocated to a Participant directed investment brokerage arrangement made available by the Administrator under Section 10.3.

(c) The Trustee shall establish a default investment allocation under the Investment Options established under paragraph (a) of this Section for all Participants and Beneficiaries who do not make an investment allocation request under this Section 10.4.

(d) Once made, an investment allocation request shall remain in effect for all subsequent Contributions until changed by the Participant or Beneficiary. A Participant or Beneficiary may change his or her investment allocation at such times as are permitted by the Administrator. Such changes shall become effective as soon as administratively practicable after the Administrator's receipt of such investment allocation election.

10.5 LIMITATION OF FIDUCIARY RESPONSIBILITY.

(a) The Committee, the Administrator and the Trustee are not fiduciaries and are not liable for any loss resulting from a Participant's or Beneficiary's exercise or failure to exercise control over his or her Individual Account provided under the Plan, including, but not limited to, any request or failure to request an investment allocation under Section 10.4.

(b) A Participant or Beneficiary is not a fiduciary by reason of the exercise or failure to exercise control over his or her Individual Account as permitted under the Plan.

10.6 TRUSTEE APPOINTMENT AND RESIGNATION; REMOVAL AND SUCCESSION OF TRUSTEES.

(a) Appointment of Trustee. The Trustee shall be the Committee or its designee.

(b) Resignation or Removal of Trustee. The Trustee (or any individual trustee) may resign at any time by filing the Trustee's (or individual trustee's) resignation, in writing, with the Administrator. The removal of the Trustee (or any individual trustee) shall be accomplished pursuant to State statute or applicable regulatory guidance. Upon resignation or removal, the Trustee shall render an accounting of its administration since the last annual accounting and shall transfer and deliver the assets in hand under this Plan to any remaining or successor Trustee. Any successor Trustee shall have all the same titles, rights, powers, authorities, discretions and immunities as the original Trustee hereunder.

10.7 EXPENSES; COMPENSATION. The State agrees to pay all expenses properly and actually incurred by the Trustee in the administration or termination of the Trust Fund, including compensation for the Trustee's services as Trustee and legal expenses, provided that, if the Trustee already receives full time pay from the State, the Trustee may not receive such compensation. Should the State for any reason fail to pay such expenses, the same shall be paid out of the Trust Fund. The Trustee shall receive for the services rendered as Trustee hereunder such reasonable compensation as the State and the Trustee may from time to time agree upon, unless the Trustee receives full time pay from the State.

10.8 MANAGEMENT OF ASSETS.

(a) Powers of the Trustee or Investment Manager. The Trustee who is managing and administering the Trust Fund or, if applicable, an investment manager which has been appointed by the Administrator to manage the Plan's assets, shall be and hereby is empowered and authorized, in its sole discretion and subject to current rules and regulations at the time the investment is made and subject to the provisions of the Plan with respect to Participant direction (and voting) of investments:

(i) To invest and reinvest contributions and any accretions thereto, whether capital gains or income or both, and the proceeds of any sale, pledge, lease or other disposition of any assets of the Trust Fund in bonds, notes, mortgages, commercial paper, coins, stamps, foreign bonds, antiques, broodmares, gold, art, silver, diamonds, second trusts, option securities, in any other type of personal property and in real property.

(ii) To vote any and all stock held hereunder and to continue any investment in stocks, bonds, real estate notes or other securities, or real or personal property, which may at any time form a part of the Trust Fund.

(iii) To invest, reinvest and change investments; to sell, mortgage, pledge, lease, assign, transfer and convey any and all of the Trust Fund property for cash or on credit, at public or private sale; to exchange any Trust Fund property for other property; to grant options to purchase or acquire any Trust Fund property; to determine the prices and terms of sales, exchanges or options; and to execute, acknowledge and deliver any and all deeds or other trust instruments of conveyance which may be required to carry the foregoing powers into effect, without obligation on the part of the purchaser, lessee, lender, assignee or transferee, or anyone to whom the property may in any way be conveyed to see to the application of the purchase money loans or property exchanged, transferred, assigned or conveyed.

(iv) To allow cash in the Trustee's hands to remain on deposit in the commercial or savings department of any bank or trust company supervised by the United States or a State or agency of either, even if it is a fiduciary or party-in-interest, at any time and from time to time in a reasonable amount; and, as to such amount on deposit, the Trustee shall have liability for such interest as may be paid on such deposit.

(v) To exercise with respect to all investments all of the rights, powers and privileges of an owner including, without limiting the foregoing, the power to give proxies and to pay calls, assessments and other sums deemed necessary for the protection of the Trust Fund; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations,

mergers and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as the Trustee may deem advisable; to exercise or sell stock subscriptions or conversion rights and to accept and retain as an investment hereunder any securities received through the exercise of any of the foregoing powers. If the Trustee shall pay more than the par value of any security purchased, the Trustee shall not be obligated to establish a sinking fund out of the income of such investments for repaying to the principal the same amount paid above par.

(vi) To take any action with respect to conserving or realizing upon the value of any Trust Fund property and with respect to foreclosures, reorganizations, or other changes affecting the Trust Fund property; to collect, pay, contest, compromise, or abandon demands of or against the Trust Fund estate, wherever situated; and to execute contracts, notes, conveyances and other instruments, including instruments containing covenants and warranties binding upon and creating a charge against the Trust Fund estate, and containing provisions excluding personal liability.

(vii) To employ agents, including investment counsel, for advice and to manage the investment of the Trust Fund property, to employ attorneys, auditors, depositories and proxies, with or without discretionary powers and all such parties shall have the right to rely upon and execute the written instructions of the Trustee, and shall not be obligated to inquire into the propriety of the acts of directions of the Trustee.

(viii) To compromise any claims existing in favor of or made against the Trust Fund.

(ix) To engage in any litigation, either for the collection of monies or for other properties due the Trust Fund, or in defense of any claim against the Trust Fund; provided, however, that the Trustee shall not be required to engage in or participate in any litigation unless the Trustee shall have been indemnified to its satisfaction against all expenses and liabilities to which the Trustee may become subject.

(b) Investment Manager. Notwithstanding the foregoing, the Administrator reserves the right to appoint an investment adviser registered as such under the Investment Advisers Act of 1940, a bank (as defined in that Act) or an insurance company qualified to perform investment management services under the laws of more than one state to manage the investments of all or any part of the Trust Fund. Upon such appointment, and acknowledgment by the appointee that it is a fiduciary, the appointee shall have all rights to manage the investments of that portion of the Trust Fund over which authority has been granted. The Trustee shall be relieved of all further responsibility in respect thereof and shall abide by the instructions of such appointee.

(c) Powers of the Participants. The provisions of this subsection shall govern the voting and tendering of stock, as long as the resulting voting and tendering (or nontendering) of stock are proper and are in accordance with the terms of the Plan. If the voting and tendering (or nontendering) of stock that would result from the application of the provisions of this Article are not proper or are not in accordance with the terms of the Plan, the Trustee shall vote or tender (or not tender) stock in the manner consistent with its duties hereunder. The Trustee shall vote and tender (or not tender) itself or by proxy, all shares of stock held in trust under the Plan pursuant to the procedures established by the Administrator including, if elected by the Administrator in its

discretion, pursuant to instructions received by the Administrator from Participants concerning the vesting and tendering of stock in which their respective accounts are invested.

10.9 RELIANCE BY TRUSTEE. The Trustee may rely on any decision of the Administrator purporting to be made pursuant to the terms of this Plan and on any list or notice furnished by the State or the Administrator as to any facts, the occurrence of any events or the existence of any situation, and shall not be bound to inquire as to the basis of any such decision, list or notice, and shall incur no obligation or liability for any action taken or suffered to be taken by them in reliance thereon.

10.10 CHANGES IN ADMINISTRATOR. The Trustee shall not be bound to inquire as to changes in the Administrator and shall be entitled to rely on such information as it may receive from time to time from the State with respect to such membership.

10.11 LEGAL COUNSEL. The Trustee may consult with legal counsel (who may or may not be counsel for the State; provided, however, that while the Committee is the Trustee, shall be the Attorney General or counsel appointed by the Attorney General) concerning any question which may arise with reference its obligation to discharge its duties under this Plan for the exclusive benefit of Participants and Beneficiaries, and the Trustee may rely in good faith upon the opinion of such counsel.

10.12 ACCOUNTING OF FUNDS AND TRANSACTIONS.

(a) The Trustee shall keep true and accurate records of all transactions of the Trust Fund which records shall be available for inspection on order by authorized representatives of the State or by Participants at reasonable times.

Although a separate Account for each Participant under the Plan shall be maintained as herein provided, it shall not be necessary for the Trustee to make or maintain an actual physical division of the assets of the Trust Fund until the time shall arrive for the payment to a Participant or a Beneficiary, and, at such time or times, the Trustee need only make an actual division of so much of any Account as may be necessary to satisfy the particular payments to be made.

(b) The Trustee shall prepare and deliver to the State an accounting of the funds and transactions since the last previous such accounting of the Trust Fund. The earnings and losses of the Trust Fund will be allocated to each Participant's Account in the ratio that such Account balance bears to all Participant Account balances, subject to the provisions regarding Participant direction of Accounts in Section 8.5.

10.13 RELIANCE ON TRUSTEE. No person contracting or in any way dealing with the Trustee shall be under any obligation to ascertain or inquire: (i) into any powers of the Trustee, (ii) whether such powers have been properly exercised, or (iii) about the sources or applications of any funds received from or paid to the Trustee. Any person contracting or in any way dealing with the Trustee may rely on the exercise of any power or authority as the conclusive evidence that the Trustee possesses such power or authority.

10.14 LEGAL ACTION. In the case of any suit or proceeding regarding this Plan to which

the Trustee is a party, the Trustee, and individual members thereof, shall be reasonably reimbursed for any and all costs, including attorney's fees, and for all necessary expenses which it has incurred or become liable on account thereof or on account of any other phase of its administration of the Trust Fund, and it shall be entitled to reimburse itself for said expenses out of the Trust Fund. In order to protect the Trust Fund against depletion as the result of ill-advised litigation, it is agreed that in the event any Participant, Beneficiary or Eligible Employee brings any legal action against the Trustee, the result of which shall be adverse to the party bringing such suit, the court costs and attorney's fees to the Trustee in defending such suit shall be charged to such extent as is allowed by a court of competent jurisdiction, and as is possible, directly to the account of said Participant, Beneficiary or Eligible Employee, and only the excess, if any, of such costs and fees over and above the Participant's separate share of the fund shall be included in the expense in determining the earnings or loss to the Trust Fund.

10.15 MEETINGS AND DECISIONS OF TRUSTEE.

(a) Meetings of the Trustee shall be held at such place or places as may be agreed upon by a majority of the individual trustees and may be called by any individual trustee upon written notice to the other individual trustees and may be held at any time without such notice if all the individual trustees consent.

(b) Action by the Trustee may also be taken by it in writing without a meeting, provided, however, that in such cases there shall be unanimous written consent therein by all of the individual trustees. Whenever action is taken by the Trustee pursuant to the terms hereof, such action shall be taken by affirmative vote of a majority of the individual trustees then designated and entitled to exercise authority with respect to such action.

ARTICLE 11

MISCELLANEOUS

11.1 **LIMITATION OF RIGHTS.** Neither the establishment of this Plan nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving a Participant or other person any legal or equitable right against the State except as provided in the Plan.

11.2 **NO CONTRACT OF EMPLOYMENT.** Nothing in this Plan shall be deemed to be an agreement, consideration, inducement or condition of employment, nor shall the rights or obligations of the State or of any employee of the State to continue or terminate employment at any time be affected hereby.

11.3 **LIMITATION ON ASSIGNMENT.** Benefits under this Plan may not be assigned, sold, transferred, or encumbered and any attempt to do so shall be void. A Participant's or Beneficiary's interest in benefits under the Plan shall not be subject to debts or liabilities of any kind and shall not be subject to attachments, garnishment or other legal process. Notwithstanding any other provision of the Plan, the Committee may pay benefits under this Plan to alternate payees as provided pursuant to Section 24-52-105, C.R.S. (2003), and Code Section 414(p).

11.4 **REPRESENTATIONS.** The State does not represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will result from participation in this Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Furthermore, the State does not represent or guarantee successful investment of Deferrals, and shall not be required to repay any loss which may result from such investment or lack of investment.

11.5 **SEVERABILITY.** If a court of competent jurisdiction holds any provisions of this Plan to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

11.6 **APPLICABLE LAW.** This Plan shall be construed in accordance with applicable federal law and, to the extent otherwise applicable and to the extent not superseded by applicable federal law, the laws of the State of Colorado.

IN WITNESS WHEREOF, the State of Colorado has caused this amended and restated Plan to be duly executed by its duly authorized designees, and the Trustee has joined herein to evidence its acceptance of the provisions of the Plan applicable to the Trustee, effective as of May 1, 2004, on this 8th day of April, 2004.

ATTEST/WITNESS:

Print Name:_____

Print Name:_____

Print Name:_____

Print Name:_____

Print Name:_____

COMMITTEE/TRUSTEE

By:_____ (SEAL)

Print Name:_____

Title:_____

By:_____ (SEAL)

Print Name:_____

Title:_____

By:_____ (SEAL)

Print Name:_____

Title:_____

By:_____ (SEAL)

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By:_____ (SEAL)

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By:_____(SEAL)

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Title:_____

Print Name:_____

By:_____(SEAL)

Print Name:_____

Title:_____

Print Name:_____

By:_____(SEAL)

Print Name:_____

Title:_____

Print Name:_____

By:_____(SEAL)

Print Name:_____

Title:_____

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